

REVISED FINAL STATEMENT OF REASONS:

The California Department of Corrections (CDC) proposes to amend Section 3260.1 of the California Code of Regulations, Title 15, related to public records duplication.

The California Government Code (GC) Section 6250 et seq. establishes the California Public Records Act (PRA) and states that the "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." GC Section 6253(b) recognizes that the Department "...shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable." The proposed regulation adopting CCR, Title 15 Section 3260.1 will bring the Department into compliance with the California PRA.

Section 3260.1 is adopted to allow the Department to charge a requestor a fee of 12 cents per page plus postage to duplicate and mail a public record as defined in the California PRA. Identifying the specific costs involved with the duplication and mailing of public records requests will allow for department wide standardization of this process to ensure that all members of the public have equal access to public records as defined in GC Section 6250 et seq. The CDC has determined the actual cost of duplication to be \$.115 (rounded up to \$.12) per page.

This determination was made based on a study completed by the CDC entitled "Copying charges under the Public Records Act," dated July 28, 2000. The CDC has determined the actual cost of duplication by adding the calculations based on CDC's headquarters administration, which includes actual equipment costs, paper costs, and personnel costs, which are as follows:

Equipment cost: Equipment cost is the average copier cost per copy through the expected lifetime of the copier. This cost was calculated by taking the lowest average copier cost per copy: \$.004 + the highest average cost per copy: \$.0347 divided by 2 = \$.019.

Paper cost: Paper costs are based upon the last State contract with Office Depot for 8.5" x 11", 20 pound, recycled bond paper at \$.005 per sheet.

Personnel cost: Personnel costs is the average total compensation for all five job classifications that CDC has identified as the most common office support or clerical classifications to make copies including benefits and total annual compensation. This cost was broken down into labor costs (for copying a one page document) along with stapling and unstapling costs.

The labor cost to copy a one-page document was calculated as follows:

$$\frac{\$34,983 \text{ (average salary)} + 1,778 \text{ hrs (work hrs per year)} + 60 \text{ min.} + 60 \text{ seconds}}{14.88 \text{ (average length of time to make one copy)}} = \$.081$$

The CDC has determined that in order to administer a charge for the unstapling and restapling of documents, the Department must include a separate per staple charge and, while few requests would not involve any staples, most would involve one or more, and some would involve heavy-duty staples, which are very

difficult to remove. A regulation that tried to cover every conceivable option under these circumstances would be difficult and time consuming to administer and not serve the public interest. Therefore, for administrative simplicity, a charge of \$.01 (one cent) will be incorporated into the overall personnel cost. The cost was calculated by taking the total labor costs, \$.081 + charge for stapling \$.01 = \$.091.

Based on this information the CDC has determined that the direct cost of duplication to provide one copy of a requested public record is \$.12 per page (standard letter or legal size) based on the following equation:

Equipment cost	\$.019
Paper cost	\$.005
Personnel cost	<u>\$.091</u>
Actual cost of copying	\$.115 (rounded up to \$.12)

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

PUBLIC COMMENTS:

Public Hearing: Held August 12, 2002 at 9:00 a.m.

No one attended the public hearing and no oral comments were received.

Summaries and Responses to Written Comments:

Commenter #1:

Comment A: Commenter contends that the Department of Corrections seeks to establish a fee of \$.012 per copy of each record produced in response to a Public Records Act Request under Government Code Section 6253(b). Commenter also explained, in detail, the reasons behind this regulation change, which are included in the Notice of Change to Directors Rules, Number 02/07.

Accommodation: None.

Response A: The Department agrees with the details provided regarding Notice of Change to Directors rules, Number 02/07.

Comment B: Commenter contends the CDC seeks to include in its "direct costs of duplication," benefits for its employees, \$0.01 fee for stapling and unstapling documents, and to impose a postage fee in addition to the duplication fee's. Commenter contends that fees for ancillary services such as employee benefits, postage, stapling and unstapling are prohibited by the provisions of the Public Records Act. In addition the CDC seeks to establish a separate postage fee.

Accommodation: None.

Response B: The Department contends that the imposition of postage is not a direct cost of duplication; however, it is also not an ancillary cost that is associated with retrieving documents and processing the file. In fact, postage and mailing lies outside of the duplication framework. And the statute itself, Government Code Section 6253(b) does not prohibit the imposition of postage. It therefore cannot be assumed that the Legislature intended that agencies must absorb all the costs associated with sending documents, especially large reams through the mail. Therefore CDC is within its rights to charge records requesters for postage.

Comment C: Commenter contends the Public Records Act provision allowing an agency to charge a fee covering "direct costs of duplication" only allows such agency to recover the costs of copying documents. Those "direct costs of duplication" do not include ancillary tasks necessarily associated with retrieval, inspection, and handling of the file from which the copy is extracted (North County Parents Organization for Children with Special Needs v. California Department of Education (1994) 23 Cal. App. 4th 144; 23 Cal. Rptr. 2d 539.).

Accommodation: None.

Response C: The Department agrees that Government Code section 6253(b) mandates that upon a valid request for public records, the state agency "shall make the records promptly available to any person upon payment of fees covering direct costs of duplication." North County Parents v. Department of Education, the main case law interpreting section 6253(b) gives a narrow interpretation of the term, direct costs. "The direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it. 'Direct cost' does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted." North County Parents, 23 Cal.App.4th at 148

The commenter contends that the CDC should not account for the costs of stapling and unstapling documents, a one-cent fee, in its figure of 12 cents, plus postage; however, the Department contends that this is a direct cost of duplication. When duplicating large amounts of documents or large documents for the purpose of a public records act request, it is necessary to unstaple the documents before sending them through the machine. Otherwise, it is awkward and time consuming to copy. Therefore, stapling and unstapling is the direct cost of running the machine, and is not an ancillary task associated with retrieving or handling the file.

Comment D: Commenter contends that the ruling in North County (noted above) was that the “fees covering direct costs of duplication” means just that. The court noted, “there seems to be little dispute as to what “duplication” means. It means just what we thought it did before looking it up: To make a copy.” In addition, commenter contends the court ruled that “A “reasonable fee” or the “actual costs of providing a copy” could be interpreted to include the costs of all the various tasks associated with locating and pulling the file, excising material, etc. When these phrases are replaced by the more restrictive phrase “direct costs of duplication” only one conclusion seems possible. The direct costs of duplication is the costs of running the copy machine...” Direct costs “does not include the ancillary tasks necessarily associated with retrieval, inspection and handling the file from which the copy is extracted.” Commenter contends that the court concluded that the only fee’s chargeable for furnishing copies under the Public Records Act, is the costs of copying the records.

Accommodation: None.

Response D: Please see **Commenter #1 Response C**.

Comment E: Commenter contends that words of a statute are to be interpreted, “according to the usual ordinary import of the language employed in framing them.” (In re Alpine (1928) 203 Cal. 731, 737.).

Accommodation: None.

Response E: The Department contends that in fact we are interpreting the law according to the usual ordinary import of the language.

Comment F: Commenter contends the Initial Statement of Reasons included that the Department will assess employee charges for running copies of records at 14.88 seconds per copy, which is unreasonable. Such a charge, to the extent than it includes such an unreasonable charge, does not comport with the provisions of the Public Records Act.

Accommodation: None.

Response F: The Department contends that this figure comes from an objective study from the Department of Health Services, that the CDC adopted in 2000. The 14.88 seconds per copy was based on the average time it took office workers to position a set of documents, check the controls, make the copy, and recover the copy. This methodology is in accordance with the standard of North County Parents Organization, and the Public Records Act.

Comment G: Commenter contends that simple math will reveal that one copy every 14.88 seconds will equal 4 copies per minute or 240 copies per hour. Based on this claim, the CDC seeks to assess a bulk of its fee (\$0.081) for each duplication. Commenter contends that the CDC conveniently omitted the fact that they recently leased (system wide) high speed/multi-function copiers that have duty cycles of ten thousand copies per day. These new copiers produce 60 copies per minute (a 1500% efficiency over what CDC claims it will cost it's employees to duplicate documents.)

Accommodation: None.

Response G: The Department contends the study on which this regulation is founded was created in 1997 by the Department of Health Services, and then was

later adopted by the CDC in July, 2000 and thus is only 2 years old. The CDC has not done a statewide upgrade of its copy machines in the last two years; therefore the figure used to calculate the personnel costs is valid.

Comment H: Commenter contends that the Public Records Act only permits the CDC to charge it's costs for running the copy machine, not the inflated fee's it seeks to assess to the pubic wanting to know the public's business. Commenter contends this regulation must be rejected until the CDC can tell the public what it's actual employee costs of running the copy machine are.

Accommodation: None.

Response H: The Department contends this study is valid and has properly calculated the actual employee cost of running a copy machine and based on that has concluded that \$0.12 per copy is the actual cost of duplication. In addition, please see **Commenter #1, Response G.**

Comment I: Commenter contends that the CDC arbitrarily "round[ed] up" its Public Records Act charge from \$0.115 to \$0.12. The Public Records Act only permits a state agency to charge it's direct costs of duplication, not a "rounded up" figure. Therefore commenter contends the CDC must not be permitted to "round up" it's inflated assessments as such is contrary to law.

Accommodation: None.

Response I: The Department contends that this discrepancy of a half cent per page upwards is in good faith, and is not, as the commenter contends, arbitrary. Rounding up is natural. Also, the added cost to the requester, for a single public records request, is very small. But for the CDC, which processes thousands of these requests, an opposite discrepancy downward is significant.

Commenter #2:

Comment A: Commenter contends that personnel costs are already state budgeted which should not need to be offset. He also contends that these employees would have a job at CDC headquarters or elsewhere whether they made 1 copy or 1 million copies per year.

Accommodation: None.

Response A: The Department contends that the Public Records Act expressly allows state agencies to charge outside requesters for the direct duplication of public records pursuant to Government Code section 6253(b). This provision allows state agencies to recover costs for the time and resources spent filling private requests that would otherwise be devoted to state time and resources. The personnel cost for the duplication of public records and are therefore lawful. In addition, **Please see Commenter #1, Response C.**

Comment B: Commenter contends that the California Public Records Act (CPRA) is the California compliance with the Federal (U.S.) Freedom of Information Act (FOIA). He contends that in Wilson v. Superior court (App 2 Dist 1996) 59 Cal Rptr 2d 537. 51 Cal App 4th 136, which includes that in the text of your proposed change there is no fee waiver, like in the FOIA, where the first two hours and 100 pages are free to all non-commercial requestors.

Accommodation: None.

Response B: The Department contends that because the two have a common purpose, federal decisions under the FOIA may generally be used to construe the CPRA, *Wilson v. Superior Court* (1997) 51 Cal.App.4th 1136, 1141. This rule applies, however, only when the FOIA and the CPRA contain analogous provisions, and the CPRA does not contain language that conflicts with the FOIA. In the limited context of whether agencies may charge requesters for the duplication of public records, the FOIA differs from the CPRA. The FOIA does provide a limited basis upon which public records from federal agencies must be provided free of charge (5 U.S.C. section 552(a)(4)). But the CPRA allows state agencies to charge requesters for the direct costs of duplication, without any exception (Government Code section 6253(b)). Therefore, this regulation directly accords with the CPRA, notwithstanding the FOIA and is thus valid.

Comment C: Commenter contends that on several occasions, CDC has sent copies of his requests to third parties that could also get billed. He states that if CDC continues to send copies of CPRA requests and possibly the answer to third parties who did not request such information: This is a waste of time and resources.

Accommodation: None.

Response C: The Department contends that although the above comment does regard an aspect of or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific changes proposed in the regulation therefore no response is necessary by the Department in refutation of or accommodation to the comment.

Comment D: Commenter contends that persons requesting public information from CDC, about CDC should not have to show or demonstrate why the request has an adverse affect upon them in order to be entitled to public information. He also contends that it is clearly misconduct by state employees to deny public records based on the theory that, "you have not demonstrated that the departmental decision, action, condition, or policy adversely affects your welfare. See CCR 3084.1(a)." (July 2, 2002, inmate appeals branch letter to this writer).

Accommodation: None.

Response D: The Department contends that although the above comment does regard an aspect of or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific changes proposed in the regulation therefore no response is necessary by the Department in refutation of or accommodation to the comment.

Comment E: Commenter contends that some branches of CDC answer CPRA requests in a timely manner, while other branches refuse to acknowledge requests. There is no ambiguous interpretation of Government Code Section 6250 et seq., yet certain Divisions/Branches of CDC think there is. Commenter would like to know why.

Accommodation: None.

Response E: Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Commenter #3:

Comment A: Commenter contends that the notice heading entitled "Notice of Change to Director's Rules," (emphasis added in comment) and is an error. Commenter contends that the heading states, "This notice announces the **adoption...**" (emphasis added in comment) and is incorrect and should read that this notice announces the **proposed** action. He contends that this part is crucial to gain the attention of potentially interested persons who would make a public or written comment, therefore the notice is inadequate.

Accommodation: None.

Response A: The Department contends that our notice informing the public with regards to all proposed regulatory actions has always been entitled, "Notice of Change to Director's Rules" (NCDR), and it is very clear that the department is accepting comments with regards to this proposed change, therefore no accommodation is necessary. With regards to this particular NCDR and it announcing the "adoption" was simply an oversight, however it is still very clear that the Department is accepting public comments on this issue and that the Department was to hold a public hearing hearing on August 12, 2002, therefore the notice is adequate and will require no further notification. In addition the implementation date is to be announced, therefore it is obvious that this NCDR was not announcing the adoption of a new regulation

Comment B: Commenter contends that the Department has calculated the average salary, divided by 1,778 hours (i.e. the number of work hours per year. He contends that this is an incorrect average and in fact there are 52 workweeks per year with 40 work hours per week and this gives a total of (52 x 40) which totals 2,080 work hours per year, not 1,778 hours. He also contends that employees are paid their salary regardless of time-off, e.g., vacation, sick leave, et al. As a result of this miscalculation the equation used should be as follows:

$$\begin{aligned} & \$34,983 \text{ (average salary)} \div 2,080 \text{ hours (work hours per year)} \div 60 \text{ min.} \div 60 \\ & \text{seconds} \times 14.88 \text{ seconds (average length of time to make one copy)} = \$.0695 \\ & \text{or } \$.07. \end{aligned}$$

Accommodation: None.

Response B: The Department contends that the hourly labor rate was developed based on the State policy in the State Administrative Manual Section 8740 and the Department of Finance Budget Letter, which specifies 1778 hours per year (2920 hours/year less hours for weekends, holidays, average vacation and sick leave used). Therefore the Department will not be utilizing the above-mentioned formula.

Comment C: Commenter contends that the \$0.01 charge to be incorporated into the overall personnel cost as a charge for stapling is insufficiently supported. He contends that the statement does not provide data indicating the average or median

number of pages copied to make an accurate evaluation of the number of staples removed and inserted nor the length of time for the same. Without this data an accurate financial evaluation cannot be made. However, the commenter contends using the statements assumptions about personnel costs, it would be \$0.005 and using my calculations it would be \$0.0005, which are as follows:

$$10 \text{ seconds} \times \$0.005 \text{ cost for stapling} = \$0.0005$$

Accommodation: None.

Response C: The Department contends that the figure of one cent has come directly from the study that the CDC adopted in 2000. The figure of one cent was based on recovering the actual costs for copying, based on the fact that the many copies of public requests involve a substantial time spent to staple and unstaple.

Comment D: Commenter contends that persons requesting public information from CDC, about CDC should not have to show or demonstrate why the request has an adverse affect upon them in order to be entitled to public information. He also contends that it is clearly misconduct by state employees to deny public records based on the theory that, "you have not demonstrated that the departmental decision, action, condition, or policy adversely affects your welfare. See CCR 3084.1(a)." (July 2, 2002, inmate appeals branch letter to this writer).

Accommodation: None.

Response D: The Department contends that although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment E: Commenter contends that some branches of CDC answer CPRA requests in a timely manner, while other branches refuse to acknowledge requests. There is no ambiguous interpretation of Government Code Section 6250 et seq., yet certain Divisions/Branches of CDC thing there is. Commenter would like to know why.

Accommodation: None.

Response E: The Department contends that although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.